

1 BRANDIE N. CHARLES, Bar No. 188892
bcharles@littler.com
2 GEORGE BENJAMIN, Bar No. 273240
gbenjamin@littler.com
3 LITTLER MENDELSON, P.C.
2049 Century Park East
4 5th Floor
Los Angeles, CA 90067.3107
5 Telephone: 310.553.0308
Facsimile: 310.553.5583
6

7 Attorneys for Defendant
ULTA SALON, COSMETICS & FRAGRANCE,
8 INC.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 GABRIELLA M. HERNANDEZ,,
12

13 Plaintiff,
14

15 v.
16

17 ULTA SALON, COSMETICS &
FRAGRANCE, INC., a corporation;
and DOES 1 TO 50, inclusive;,
18

19 Defendants.
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Case No. 2:15-CV-08045

**DEFENDANT ULTA SALON,
COSMETICS & FRAGRANCE,
INC.'S NOTICE TO FEDERAL
COURT OF REMOVAL OF CIVIL
ACTION FROM STATE COURT**

[28 U.S.C. §§ 1331, 1332, 1441, 1446]

Complaint Filed: August 28, 2015
(Los Angeles County Superior Court)

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1 **TO THE CLERK OF THE ABOVE CAPTIONED COURT, PLAINTIFF**
 2 **AND HER ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant ULTA SALON, COSMETICS &
 4 FRAGRANCE, INC. (hereinafter “Ulta” or “Defendant”) hereby removes the above-
 5 captioned action (Case No. BC592916) from the Superior Court of the State of
 6 California, County of Los Angeles, to the United States District Court for the Central
 7 District of California, pursuant to 28 U.S.C. sections 1331, 1332, 1441 and 1446.

8 This Notice is based upon the original jurisdiction of this Court over the parties
 9 under 28 U.S.C. section 1331 and 28 U.S.C. section 1332 based upon the existence of
 10 a federal question and the complete diversity of citizenship among the parties.

11 **I. STATEMENT OF JURISDICTION**

12 1. This Court has original jurisdiction over this action pursuant to the
 13 diversity of citizenship statute. *See*, 28 U.S.C. § 1332(a). In relevant part, the
 14 diversity statute grants district courts original jurisdiction over civil actions where the
 15 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and
 16 costs, and is between citizens of different states. As set forth below, this case meets
 17 all of the diversity statute’s requirements for removal, and is timely and properly
 18 removed by the filing of this Notice. *See*, 28 U.S.C. §§ 1332, 1441(a), and 1446.

19 2. This Court also has original jurisdiction over this action pursuant to the
 20 federal question statute. *See*, 28 U.S.C. § 1331. In relevant part, the federal question
 21 statute grants district courts original jurisdiction over civil actions arising under the
 22 laws of the United States. As set forth below, this case meets all of the federal
 23 question statute’s requirements for removal, and is timely and properly removed by
 24 the filing of this Notice. *See*, 28 U.S.C. §§ 1331, 1441(a), and 1446.

25 **II. VENUE**

26 3. This action was filed in the Superior Court of the State of California,
 27 County of Los Angeles. Venue properly lies in the United States District Court for
 28

the Central District of California, Western Division, pursuant to 28 U.S.C. sections 84(c)(2), 1391(a) and 1441(a).

III. STATUS OF PLEADINGS, PROCESS AND ORDERS

4. On August 28, 2015, Plaintiff Gabriella M. Hernandez (“Plaintiff”) filed an unverified Complaint for Damages in Superior Court of the State of California, County of Los Angeles: *GABRIELLA M. HERNANDEZ v. ULTA SALON, COSMETICS & FRAGRANCE, INC., a corporation; and DOES 1 TO 50, inclusive*, Case No. BC592916 (hereinafter the “Complaint”). (A true and correct copy of the Complaint is attached as **Exhibit A** to the Declaration of George S. Benjamin in Support of Removal (“Benjamin Decl.”), ¶2.)

5. Plaintiff’s Complaint asserts five purported causes of action: (1) Disability Discrimination (Cal. Govt. Code § 12900 *et seq.*); (2) Wrongful Termination Against Public Policy (Cal. Govt. Code § 12940(a)); (3) Interference with Family Medical Leave Act (29 U.S.C. §§ 2615 and 2617(a)); (4) Failure To Prevent Discrimination (Cal. Govt. Code § 12940(k)); and (5) Intentional Infliction of Emotional Distress. (Benjamin Decl., ¶2, Exh. A.) Plaintiff seeks to recover for past and future lost income, employment benefits, compensatory damages, special damages, including emotional distress damages, punitive damages, attorneys’ fees and costs of suit. (Benjamin Decl., ¶2, Exh. A, ¶¶ 23, 24, 29, 30, 36, 43, 44 and Prayer for Relief.)

6. On September 11, 2015, the Clerk of Department 56 of the Superior Court of the State of California, County of Los Angeles issued a Notice of Case Management Conference in this matter. (A true and correct copy of this Notice is attached as **Exhibit B** to the Benjamin Decl., ¶3.)

7. Plaintiff’s Complaint, Summons, Civil Case Cover Sheet, Civil Case Cover Sheet Addendum And Statement of Location, and Notice of Case Assignment were served on Ulta via its agent for service of process, Corporation Service Company (“CSC”), on September 14, 2015 by personal delivery. (True and correct copies of the

1 aforementioned documents are collectively attached as **Exhibit C** to the Benjamin
2 Decl., ¶4.)

3 8. On October 13, 2015, Ulta filed its Answer to Plaintiff's Complaint for
4 Damages in the Superior Court of the State of California, County of Los Angeles. (A
5 true and correct copy of the Answer is attached as **Exhibit D** to the Benjamin Decl.,
6 ¶5.)

7 9. The documents attached as Exhibits "A" through "D" to the Benjamin
8 Decl. constitute all of the pleadings and process that have been filed or received by
9 Defendant in this action. To the best of Ulta's knowledge, no further process,
10 pleadings, or orders related to this case have been filed or served in the Superior Court
11 of the State of California, County of Los Angeles or served by any party other than as
12 described above. The requirements of 28 U.S.C. § 1446(a) are therefore satisfied.

13 10. The Complaint names "DOES 1 TO 50." (Benjamin Decl., ¶2, Exh. A.)
14 Ulta is informed and believes and on that basis alleges that none of the fictitiously-
15 named defendants have been served with a copy of the Summons and Complaint.
16 Therefore, the fictitiously-named Doe defendants are not parties to the above-
17 captioned action and need not join or consent to Ulta's Notice of Removal. *Salveson*
18 *v. Western States Bankcard Ass'n*, 731 F.2d 1423, 1429 (9th Cir. 1984) (named
19 defendants not yet served in state court action need not join in the notice of removal.)

20 11. Copies of this Notice of Removal, as well as the Notice to State Court of
21 Removal of Civil Action, have been served upon Plaintiff's counsel and are being
22 filed with the Clerk of the Superior Court of California, County of Los Angeles –
23 Central District. (Benjamin Decl., ¶8.)

24 **IV. TIMELINESS OF REMOVAL**

25 12. This Notice of Removal is timely. Under 28 U.S.C. section 1446(b), the
26 notice of removal of a civil action must be filed within 30 days after service of the
27 summons and complaint. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe*
28

1 *Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-day removal period runs from the
2 service of the summons and complaint).

3 13. Plaintiff filed her Complaint with the Superior Court of the State of
4 California, County of Los Angeles on August 28, 2015. On September 14, 2015
5 service of the Complaint and Summons became effective as to Ulta. (Benjamin Decl.,
6 ¶¶2 and 4, Exh. A and C.) As such, this Notice of Removal is timely as a matter of
7 law.

8 **V. FEDERAL QUESTION JURISDICTION**

9 14. A state-court action may be removed to federal court if it qualifies as a
10 civil action of which the district courts of the United States have original jurisdiction
11 unless Congress expressly provides otherwise. 28 U.S.C. § 1441(a). 28 U.S.C.
12 section 1331 provides, “[t]he district courts shall have original jurisdiction of all civil
13 actions arising under the Constitution, laws, or treaties of the United States.”

14 15. This action is a civil action that may be properly removed to federal court
15 because this Court has original federal question jurisdiction over Plaintiff’s third cause
16 of action for interference with benefits under the Family Medical Leave Act (29
17 U.S.C. § 2601 *et seq.*) (“FMLA”). Plaintiff’s third cause of action alleges that
18 Defendant reduced the number of hours Plaintiff was scheduled to work upon learning
19 that Plaintiff was pregnant to ensure that she did not attain the minimum hours
20 necessary to receive FMLA benefits – which Plaintiff claims constitutes an
21 interference with Plaintiff’s rights under the FMLA. (Benjamin Decl., ¶2, Exh. A,
22 ¶¶31-36.) Plaintiff further expressly seeks damages to be awarded under the FMLA.
23 (*Id.* at ¶36.)

24 16. The FMLA is a federal statute which, in part, governs medical leaves of
25 absence. *See*, 29 U.S.C. § 2601, *et seq.* Because Plaintiff’s third cause of action
26 arises under federal law, Plaintiff’s Complaint presents a federal question on its face
27 and is properly subject to removal. *See McConnell v. Genetech, Inc.*, No. C 11-4976
28 SBA, 2012 WL 851190, at *1 (N.D. Cal. Mar. 13, 2012) (stating the Court

1 indisputably had subject matter jurisdiction over the action when it was removed
2 because the pleadings alleged a federal claim under the FMLA.) Accordingly, this
3 case is properly removed to this Court by Defendant pursuant to 28 U.S.C. sections
4 1331 and 1441(a) because it is a civil action that arises under the laws of the United
5 States.

6 17. Plaintiff's remaining claims, which are related to Plaintiff's employment
7 with Defendant, are based on the same facts, events, transactions and occurrences as
8 Plaintiff's FMLA-based claim and are so related to Plaintiff's FMLA-based claim as
9 to form part of the same case and controversy. As such, this Court has jurisdiction
10 over any remaining state law claims pursuant to the doctrine of supplemental
11 jurisdiction under 28 U.S.C. section 1367(a) as they are so related to the federal
12 claims as to form part of the same case or controversy under Article III of the U.S.
13 Constitution. Any causes of action that are separate and independent from those
14 arising under federal law are removable pursuant to 28 U.S.C. section 1441(c). Thus,
15 this is action is removable in its entirety.

16 **VI. DIVERSITY JURISDICTION**

17 18. The diversity of citizenship statute provides in pertinent part that "[t]he
18 district courts shall have original jurisdiction of all civil actions where the matter in
19 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and
20 is between — (1) citizens of different States . . ." *See*, 28 U.S.C. § 1332(a).

21 19. "Any civil action" commenced in state court is removable if it might
22 have been brought originally in federal court. *See*, 28 USC § 1441(a). Any case that
23 could have been commenced in federal court based on diversity of citizenship can be
24 removed from state court on this ground. *See*, 28 U.S.C. § 1441(b). In order to
25 remove a case to federal court on diversity grounds, two basic elements must be
26 satisfied: (1) complete diversity must exist between the parties, i.e., Plaintiff and Ulta
27 must be "citizens" of different states; and (2) the amount in controversy must exceed
28 \$75,000. *See*, 28 U.S.C. § 1332.

20. This action is a civil action over which this Court has original jurisdiction under 28 U.S.C. section 1332 and which may be removed to this Court by Defendant pursuant to 28 U.S.C. section 1441(a) based on the existence of complete diversity of citizenship between the real parties to this action and on the fact that the amount in controversy exceeds \$75,000, as set forth below.

A. Complete Diversity Of Citizenship Exists.

1. Plaintiff Is Domiciled In California.

21. To establish citizenship for diversity purposes, a person is a “citizen” of the state in which he or she is domiciled. *See, Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir. 1983); *see also, LeBlanc v. Cleveland*, 248 F.3d 95, 100 (2d Cir. 2001) (citizenship determined at the time the lawsuit is filed); *see also, Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991). A person’s domicile is the place he or she resides with the intention to remain, or to which he or she intends to return. *See, Kanter v. Warner–Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

22. At the time Plaintiff commenced this action and at the time of removal, Plaintiff was a citizen of the State of California. Plaintiff alleges in the Complaint that she is “an individual residing in the County of Los Angeles, State of California.” (Benjamin Decl., ¶2, Exh. A, ¶1); *see also, Lew v. Moss*, 797 F.2d 747, 751 (9th Cir. 1986) (residency can create a rebuttable presumption of domicile supporting diversity of citizenship); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519-20 (10th Cir. 1994) (allegation by party in state court complaint of residency “created a presumption of continuing residence in [state] and put the burden of coming forward with contrary evidence on the party seeking to prove otherwise”). Furthermore, Plaintiff’s personnel records, as well as a public record search, indicate that Plaintiff only lived in Los Angeles and Riverside counties in California during the length of her employment with Ulta, and she currently residents in Los Angeles, California. (Declaration of Dan Petrousek In Support of Ulta’s Removal (“Petrousek Decl.”), ¶5.); (Benjamin Decl., ¶9.)

1 **2. Ultra Is A Delaware Corporation With Its Principal Place Of**
 2 **Business In Bolingbrook, Illinois.**

3 23. For purposes of 28 U.S.C. section 1332, a corporation is deemed to be a
 4 citizen of any State by which it has been incorporated and of the State where it has its
 5 principal place of business. *See*, 28 U.S.C. § 1332(c)(1). As clarified by the United
 6 States Supreme Court in *Hertz Corp. v. Friend*, 559 U.S. 77, 78 (2010), “the phrase
 7 ‘principal place of business’ in § 1332(c)(1) refers to the place where a corporation’s
 8 high level officers direct, control, and coordinate the corporation’s activities, *i.e.*, its
 9 ‘nerve center,’ which will typically be found at its corporate headquarters.”

10 24. Ultra is not a state, state official, or other government entity. Ultra is a
 11 Delaware corporation, authorized to transact business in California. Ultra was, at the
 12 time of the filing of this action and the instant removal, a citizen of the State of
 13 Delaware because it was incorporated and continues to be incorporated under its laws.
 14 (Petrousek Decl., ¶3.) Ultra’s corporate headquarters and principal place of business,
 15 *i.e.*, the “nerve center” where Ultra performs executive and administrative functions, is
 16 located in Bolingbrook, Illinois. (Petrousek Decl., ¶3.); (Benjamin Decl., ¶2, Exh. A,
 17 ¶2.) While Ultra conducts business in Los Angeles County, California, Ultra is not
 18 incorporated under the laws of the State of California and its principal place of
 19 business is not located in California. Thus, Ultra is not a citizen of California.

20 25. Defendants Does 1 through 50 are fictitious. The Complaint does not set
 21 forth the identity or status of any said fictitious defendants, nor does it set forth any
 22 charging allegation against any fictitious defendants. Pursuant to section 28 U.S.C.
 23 section 1441(a), the citizenship of defendants sued under fictitious names must be
 24 disregarded for the purposes of determining diversity jurisdiction and cannot destroy
 25 the diversity of citizenship between the parties in this action. *Newcombe v. Adolf*
 26 *Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

1 26. In sum, Plaintiff is a citizen of California, and Ulta is incorporated and
2 has its principal place of business outside California. Accordingly, the complete
3 diversity requirement of 28 U.S.C. section 1332(a) is satisfied.

4 **B. The Amount In Controversy Exceeds \$75,000.**

5 27. This Court has jurisdiction over this case because the amount placed in
6 controversy by Plaintiff's alleged claims exceed \$75,000, exclusive of interest and
7 costs. 28 U.S.C. § 1332(a).

8 28. Although the Complaint does not allege a specific amount in controversy,
9 it can be ascertained that the amount in controversy in this action does, in fact, exceed
10 \$75,000.00, exclusive of interest and costs. Where a Complaint is silent as to the
11 amount in controversy, a defendant can establish the amount in controversy by the
12 allegations in a complaint, or by setting forth facts in the notice of removal that
13 demonstrate that the amount in controversy "more likely than not" exceeds
14 \$75,000.00. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996);
15 *Guas v. Miles, Inc.*, 980 F. 2d 564, 567 (9th Cir. 1992). A removing defendant "need
16 include only a plausible allegation that the amount in controversy exceeds the
17 jurisdictional threshold." *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct.
18 547, 554 (2014). The Court may consider whether it is facially apparent from the
19 Complaint that the jurisdictional amount is met. *Singer v. State Farm Mutual Auto*
20 *Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

21 29. In measuring the amount in controversy, the Court must assume that the
22 allegations of the Complaint are true and that a jury will return a verdict in favor of
23 Plaintiff on all claims asserted in her Complaint. *Kenneth Rothschild Trust v. Morgan*
24 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). The ultimate
25 inquiry is the amount that is put "in controversy" by Plaintiff's Complaint, and not
26 how much, if anything, Defendant will actually owe. *Rippee v. Boston Market Corp.*,
27 408 F.Supp.2d 982, 986 (S.D. Cal. 2005); *see also, Schere v. Equitable Life Assurance*
28 *Soc'y of the U.S.*, 347 F.3d 394, 399 (2d Cir. 2003) (recognizing that the ultimate or

1 provable amount of damages is not what is considered in the removal analysis; rather,
2 it is the amount put in controversy by the plaintiff's complaint).

3 30. In a recent decision by United States District Court, for the Central
4 District of California, the Court affirmed that the removing party does not need to
5 prove actual facts but rather need only include a "short and plain statement" setting
6 forth "a plausible allegation that the amount in controversy exceeds the jurisdictional
7 threshold." *Sasso v. Noble Utah Long Beach, LLC*, 2015 U.S. Dist. WL 898468 (C.D.
8 Cal. March 3, 2015) (citing *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct.
9 547, 554 (2014)). Moreover, Defendant need not submit evidence to support its notice
10 of removal. *Dart Cherokee*, 135 S. Ct. at 553. Defendant need only plausibly allege
11 that the amount in controversy exceeds \$75,000.00 *Id.* ("the defendant's amount-in-
12 controversy allegation should be accepted when not contested by the plaintiff or
13 questioned by the court").

14 31. Ulta denies the validity and merit of all of Plaintiff's claims, the legal
15 theories upon which they are purportedly based, and the claims for monetary and other
16 relief that flow from them. However, for purposes of removal only, and without
17 conceding that Plaintiff is entitled to any damages or penalties, assuming, *arguendo*,
18 the truth of Plaintiff's allegations, it is readily apparent that Plaintiff's claims establish
19 an amount "in controversy" in excess of the jurisdictional minimum of \$75,000,
20 exclusive of interest and costs, as required by 28 U.S.C. section 1332, as set forth
21 below.

22 1. Lost Income and Benefits.

23 32. Plaintiff alleges that, as a result of Ulta's alleged wrongful conduct, she
24 has lost wages and benefits Plaintiff would have received but for Ulta's alleged
25 wrongful conduct. (Benjamin Decl., ¶2, Exh. A, ¶¶ 23, 29, 36 and Prayer for Relief.)

26 33. During Plaintiff's employment with Ulta, Plaintiff earned an average of
27 \$373.77 gross, bi-weekly. (Petrousek Decl., ¶4.) Although Defendant denies Plaintiff
28 is entitled to recover any such damages, assuming *arguendo*, Plaintiff were to recover

1 back wages from the time she stopped working for Ulta until the present,
 2 approximately 8 months, the amount of back pay would equal approximately
 3 \$5,980.32 gross. Moreover, if the case proceeds to trial in August 2016, a year from
 4 when it was filed, and Plaintiff remains unemployed, she will be seeking a total of 18
 5 months of lost wages, which totals approximately \$13,455.72 gross.

6 34. In addition, front pay awards in California frequently span a number of
 7 years. *See Smith v. Brown-Forma Distillers Corp.*, 196 Cal. App. 3d 503, 518 (1989)
 8 (front pay until mandatory retirement age reached); *Rabaga-Alvarez v. Dart*
 9 *Industries, Inc.*, 55 Cal. App. 3d 91, 97 (1976) (four years); *Drzewiecki v. H&R Block,*
 10 *Inc.*, 24 Cal. App. 3d 695, 705 (1972) (ten years). Even conservatively estimating that
 11 Plaintiff seeks front pay benefits for only the three years after trial, the amount of
 12 future wages in controversy in this case would total at least an additional \$26,911.44
 13 gross. Thus, if this case goes to trial in August 2016, it may reasonably be estimated
 14 that Plaintiff's claims of back pay and front pay would alone total an estimated
 15 **\$40,367.16** gross.

16 2. Emotional Distress Damages.

17 35. Plaintiff also seeks damages for emotional distress, which further
 18 augments the foregoing amounts and demonstrates that the jurisdictional prerequisite
 19 for removal of this action is met. *See, Lockett v. Delta Airlines, Inc.*, 171 F.3d 295,
 20 298 (5th Cir. 1999) (plaintiff's claims for pain and suffering and humiliation properly
 21 may be factored into the jurisdictional analysis for purposes of removal). In *Kroske v.*
 22 *U.S. Bank Corp.*, 432 F.3d 976 (9th Cir. 2005), *cert denied*, 127 S.Ct. 157 (2006), the
 23 Ninth Circuit upheld the lower court's finding that the amount in controversy had
 24 been established. In reaching its holding, the Ninth Circuit reasoned that the
 25 plaintiff's "emotional distress damages would add at least an additional \$25,000 to her
 26 claim" where she had only \$55,000 in lost wages, thus satisfying the amount in
 27 controversy requirement "even without including a potential award of attorney's
 28 fees." *Id.* at 980. A similar result is compelled here, as Plaintiff expressly seeks

1 damages for emotional distress and a comparable amount of lost wages is at issue.
 2 (Benjamin Decl. ¶2, Exh. A, ¶¶23, 29, 43.) Based on *Kroske*, the emotional distress
 3 component of Plaintiff's claims could add at least **\$15,000.00** to the amount in
 4 controversy.

5 **3. Punitive Damages.**

6 36. Plaintiff also seeks an award of punitive damages. (Benjamin Decl. ¶2,
 7 Exh. A, Complaint, ¶¶24, 30, 44 and Prayer for Relief.) Under California law,
 8 punitive damages may be recovered by a plaintiff "[i]n an action for the breach of an
 9 obligation not arising from contract, where it is proven by clear and convincing
 10 evidence that the defendant has been guilty of oppression, fraud, or malice." Cal. Civ.
 11 Code § 2394(a). Punitive damages are included in calculating the amount in
 12 controversy. *See Davenport v. Mutual Ben. Health & Acc. Ass'n*, 325 F.2d 785, 787
 13 (9th Cir. 1963); *see also, Aucina v. Amoco Oil Co.*, 871 F.Supp.332 (S.D. Iowa 1994).
 14 A single-digit ratio (i.e., no more than nine-to-one) is typically appropriate when
 15 issuing an award of punitive damages. *State Farm vs. Campbell*, 538 U.S. 408, 425
 16 (2003).

17 37. Here, Plaintiff's request for punitive damages alone puts \$40,367.16 to
 18 \$363,304.44 in controversy.¹ The amount in controversy on the punitive damages
 19 component of Plaintiff's claims can be measured as a multiple of the amount in
 20

21 ¹ Numerous court decisions and jury verdicts in state and federal courts located within the Ninth
 22 Circuit affirm that compensatory and punitive damages in excess of \$75,000 have been awarded to
 23 individual plaintiffs where, as here, the plaintiff has alleged a claim for disability discrimination.
 24 *See Alvarado v. Federal Express Corp.*, 2006 WL 4470094 (N.D. Cal. 2006), (plaintiff awarded a
 25 total verdict of \$500,000 based in part on disability discrimination); *Snider v. Laquer*, 2006 WL
 26 4050121 (St. Ct. 2006) (plaintiff awarded over \$1,000,000 for pain and suffering based in part on
 27 disability discrimination); *Carr v. Washington Mutual*, 2006 WL 4470159, (plaintiff awarded a total
 28 verdict of \$800,000 based in part on disability discrimination); *Martin v. Arrow Electronics*, 2006
 WL 2044626 (C. D. Cal. 2006), (plaintiff awarded a total verdict of \$1,500,000 based in part on
 disability discrimination); *Alberigi v. County of Sonoma*, 2006 WL 1099444 (St. Ct. 2006) (plaintiff
 awarded a total verdict of \$6,500,000 based in part on disability discrimination); *Wysinger v.*
Automobile Club of Southern California, 2006 WL 397031 (St. Ct. 2006), (plaintiff awarded a total
 verdict in the amount of \$1,284,000 based in part on disability discrimination).

1 controversy of the lost wages, which are approximately \$40,367.16, as set forth above.
 2 Thus, without conceding that such (or any) an award is warranted, the amount in
 3 controversy on the punitive damages component of Plaintiff's claims is anywhere
 4 between \$40,367.16 (a multiple of 1) and \$363,304.44 (a multiple of 9), or more.

5 38. Thus, although a punitive damages award against Ulta alone could
 6 potentially exceed \$40,367.16, most conservatively, the amount awarded in punitive
 7 damages in this matter would be at least **\$20,000.00**

8 **4. Attorneys' Fees.**

9 39. Plaintiff's Complaint also seeks attorneys' fees. (Benjamin Decl., ¶2,
 10 Exh. A, Complaint, Prayer for Relief.) Cases involving the types of claims that
 11 Plaintiff has alleged in her Complaint require at least \$75,000.00 in attorneys' fees to
 12 proceed through discovery and to trial during an approximate one-year period. The
 13 attorneys' fee claim is included in determining the amount in controversy when, as in
 14 the case at hand, Plaintiff is claiming attorneys' fees pursuant to statute. *Galt G/S v.*
 15 *JSS Scandinavia*, 142 F. 3d 1150, 1156 (9th Cir. 1998) ("When an underlying statute
 16 authorizes an award of attorneys' fees, . . . such fees may be included in the amount in
 17 controversy."). To date, Plaintiff has certainly incurred fees and costs in connection
 18 with preparing and filing her Complaint. In fact, at an assumed rate of \$300 per hour,
 19 Plaintiff's counsel would need to spend only 250 hours of attorney time (a
 20 conservative estimate of time spent through trial) to incur **\$75,000.00** in reasonable
 21 attorney's fees (250 hours x \$300 = \$75,000). (Benjamin Decl., ¶7.)

22 40. Thus, as set forth above, Plaintiff seeks lost wages, lost benefits, and
 23 damages for emotional distress, as well as an award of attorneys' fees and punitive
 24 damages, making the total potential recovery for Plaintiff on his claims, no less than
 25 **\$150,367.16** (\$40,367.16 (compensatory) + \$15,000.00 (emotional distress) +
 26 \$20,000.00 (punitive) + \$75,000.00 (attorneys' fees)), easily exceeds the \$75,000
 27 threshold.

1 41. It is also critical to note that Plaintiff would not stipulate that the
 2 maximum amount of damages and attorney's fees sought in this matter, exclusive of
 3 interest and costs, do not exceed \$75,000.00. (Benjamin Decl., ¶¶10 and 11, **Exhibits**
 4 **E and F.**)

5 42. As the amount in controversy exceeds \$75,000.00 and there is complete
 6 diversity of citizenship between the parties, this case is properly removed to this court.

7 **VII. NOTICE TO PLAINTIFF AND STATE COURT**

8 43. Following the filing of this Notice of Removal in the United States
 9 District Court for the Central District of California, written notice of such filing will
 10 be given by the undersigned to Plaintiff's Counsel, Stephen M. Rinka, Esq., of The
 11 Rinka Law Firm, and a copy of the Notice of Removal will be filed with the Clerk of
 12 the Los Superior Court of the State of California, County of Los Angeles. (Benjamin
 13 Decl., ¶8.)

14 WHEREFORE, having provided notice as required by law, the above-entitled
 15 action should be removed from the Superior Court of the State of California, County
 16 of Los Angeles.

17
 18 Dated: October 14, 2015

19
 20 By: /s/ George S. Benjamin

21 Brandie N. Charles
 22 LITTLER MENDELSON, P.C.
 23 George S. Benjamin
 24 Attorneys for Defendant
 25 ULTA SALON, COSMETICS &
 26 FRAGRANCE, INC.

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 28 Firmwide:136115264.5 059310.1084